

REMARKS

Overview

This Amendment accompanies the filing of a Request for Continued Examination (RCE). Claims 1-45 were pending in the present application. Claims 1, 21, 43 and 44 have been amended. Claims 9, 20, 22, 29, and 32-42 have been withdrawn.

Status of Claim 22

Pursuant to the Examiner's requirement, proper status of claim 22 is listed (e.g. "withdrawn").

35 U.S.C. § 112 Rejection

Claim 1 has been amended to clarify that the clause "at least one foot" refers to distance above the ground of the lower end of the pole when both the base is appropriately inserted into the ground and the pole is appropriately inserted on the base. It is respectfully submitted that this remedies any ambiguity or indefiniteness to the claim 1.

35 U.S.C. § 102 Rejection

Claims 1, 5-6, 10-14, 16-19, and 44 have been rejected as anticipated by Brott, U.S. Patent No. 295,905. This rejection is respectfully traversed. Brott shows two embodiments. Figure 1 illustrates a telegraph pole having a base B made of the same material as the pole sections above it. In this case, the material is relatively thin walled composition of "tarred paper, or paper made of straw pulp, with tar or other resonance substances, which is formed into a mass and placed into a suitable forming-mold and subjected to very great pressure." (Brott, page 1, lines 79-83). Essentially it is a pole made of successively pieces, with the lower end being

insertable into the ground. Brott does say the lower end could be filled with dirt, if desired. Note that in Figure 1, the second section of the pole has a lower end right at ground level. In contrast, Figure 2 is made of two pieces where the second piece is way above the ground.

Amended claim 1 has the following differences from Brott:

1) The length of the base is defined as greater than 8 feet and having structural characteristics allowing elevation of the pole and light fixtures 30 feet or higher from the ground. The pole is 30 feet or greater in length and has a structural characteristic different from the base. A range of taper between pole and base is also included in claim 1.

2) Claim 1 also specifically states that when the base and pole combination is installed in the ground, the lower end of the pole is at least one foot above the ground.

Claim 1 therefore differs from Brott in at least those specific ways. To anticipate, a single reference must disclose the critical limitations of the claim in the arrangement of the claim as interpreted by one of skill in the art.

In the final rejection, the Examiner argues that the base of Brott has structural characteristics different than the above ground portions of Brott. This is incorrect. Brott states: "B represents a hollow base, cone, or shell, which is placed in a trench dug therefore, said shell having an enlarged base, as shown at *b*. This cone or shell is formed in the same way as the pole proper and of the same material." (Brott, page 1, lines 94-97). The addition of soil inside of base B does not change the structural characteristics of base B.

Additionally, the final rejection states that elements *c* of Brott are lights. This is incorrect. These are "insulators" used for carrying electrically conducting wires or lines.

Still further, claim 1 addresses an aspect of the invention not disclosed in Brott. A base of at least 8 feet allows a substantial part to be placed in the ground but have the upper end

extend not too far above the ground, but far enough for the substantially tall pole to be slip fit to create a very secure joint along a substantial distance of the longitudinal axis of the pole. This allows for relatively short bases to support relatively long poles but have the joint between pole and base spread out the forces instead of having them concentrated at one level. Moreover, it allows the relatively short base (compared to the total length of the pole), to be transported and handled more easily than very long pieces. As stated in Applicant's specification, this allows contractors to use less expensive equipment, and manipulate and insert the relatively shorter bases into holes in the ground with the stubs extending from the hole. Those bases can be plumbed and then are ready for the substantially tall poles, with light fixtures attached, to be assembled horizontally on the ground (again without expensive cranes and equipment), and then simply lifted up, tilted up and seated on the stub. Moreover, claim 1 emphasizes that the bottom of the pole, slip fit on the base, is intentionally held a distance above the ground, but not an exceedingly high distance. As stated in Applicant's specification, preferably about two feet above the ground gets it above the area where moisture and environmental factors can work to a great degree (see Applicant's specification, page 18, paragraph 2).

In short, claim 1 defines a combination of substantially tall poles for elevating light fixtures to substantial heights in an easier, quicker, and more efficient manner than prior. The evidence of record establishes that the state of the art was to create a concrete footing in the ground and then bolt the bottom of a pole to that concrete footing at ground level. The problems with this scenario have been described in prior responses and are described in detail in Applicant's specification (see for example, pages 15-16).

The Brott patent is focused upon a particular material, and method of manufacture of the material, for telegraph posts. It acknowledges that the entire pole is made of the same material

and can be placed in the ground. Thus, it discloses a different combination than Applicant's claim 1. Even the embodiment of Figure 2 of Brott is different. It has two pole sections, of the same material, where the joint between the two sections is way above the ground.

Finally, Brott has no disclosure of light fixtures, a critical limitation of Applicant's claim

1. Therefore, Brott does not present a *prima facie* case of anticipation and is allowable over Brott.

Claims 5, 6, 10-14, and 16-19 are dependent upon claim 1 and submitted to be allowable for the reasons expressed in support of claim 1.

35 U.S.C. § 103 Rejections

Most of the claims have been rejected as obvious. One set of claims is rejected based on Brott alone. Another set based on a combination of Okuto (of record), in view of Crow, U.S. Patent No. 839,272, and a final set based on a Centrecon, Inc. brochure in view of Okuto. These rejections are respectfully traversed for the following reasons.

With respect to independent claim 1, Brott is missing critical limitations, as discussed above. There is no teaching or suggestion of the missing limitations in Brott. Therefore, Brott does not present a *prima facie* case of obviousness of those claims.

With regard to Okuto, claim 1 has been amended to clarify that the base comprises a single, elongated piece with a section that is intended for in the ground positioning and a section for above ground positioning. Additionally, claim 1 states that the entire base has a different structural characteristic than the pole. It is again pointed out that Okuto teaches no more than the state of the art regarding how the pole is attached to an in ground concrete footing 3. The pole is

clearly attached at ground level with the flange portion. It does not meet the limitation of claim 1 that the base comprises a single, elongated piece.

It is not seen how Crow adds anything to Okuto. In fact, Crow teaches away from Okuto. Crow utilizes sections of sequentially attached elongated pieces. The lower portion is concrete surrounding an encased tube. So are the upper portions. This does not meet the limitations of claim 1. Also, it teaches away from the hollow metal steel poles of Okuto and concrete base. Crow places its lower section 2 into the ground.

Therefore, there is no *prima facie* case of obviousness based on the combination of Okuto and Crow because (a) there is no suggestion of combining them as they teach away from each other, and (b) even if combined, they miss the critical limitations of Applicant's claims. This includes the fact that Crow does not disclose light fixtures. Crow discloses insulators 18.

The Centrecon brochure has been described in prior responses. It discloses a very tall elongated concrete pole having a direct burial end. A hollow metal pole top is slip-fit towards the top. Thus, the Centrecon brochure teaches away from Applicant's claim 1. The Okuto reference has the prior art combination of a concrete footing in the ground and a steel pole bolted to it at ground level. Therefore, they do not teach this combination. Thus, this combination also does not present a *prima facie* case of obviousness.

Claims 2-8 and 10-19 depend from claim 1 and are submitted to be allowable for the reasons expressed in support of claim 1.

Independent method claim 21 has similar limitations to claim 1. However, it is emphasized that it is a method claim and therefore under §§ 100 and 101 of the Patent Act, it must be separately evaluated. It specifically describes steps of slip fitting the pole to the base so

that its lower end is positioned at least one foot above the ground, but nearer the ground than the top of the pole. This is directly contrary to the Centrecon brochure. It also differs from Okuto.

Therefore, it is respectfully submitted that claim 21 is allowable as are claims 23-28, and 30-31.

Independent claim 43 is also a method claim. It has a variety of limitations nowhere taught or disclosed by Centrecon, Inc. or Okuto, individually or in combination. It is also submitted to be allowable.

Independent claim 44 and its dependent claim 45 describe combination that, for similar reasons to those expressed above, is not disclosed by Centrecon, Inc. or Okuto, individually or in combination.

Conclusion

It is respectfully submitted that all claims submitted are patentable over the cited references and that the application is in form for allowance. Consideration and favorable action is respectfully requested.

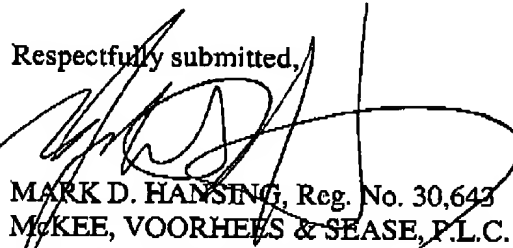
This Amendment accompanies a Request for Continued Examination (RCE). Please charge Deposit Account No. 26-0084 the amount of \$790.00 per the attached Request for Continued Examination Transmittal.

This is also a request to extend the period for filing a response in the above-identified application for two months from October 29, 2005 to December 29, 2005. Applicant is a large entity; therefore, please charge Deposit Account No. 26-0084 the amount of \$450.00 to cover the cost of the two month extension. Any deficiency or overpayment should be charged or credited to Deposit Account 26-0084.

If this response does not result in the finding of allowability of the application, a courtesy of a telephonic interview is respectfully requested prior to the issuance of a written action.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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